

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RLI INSURANCE COMPANY,)	
)	C.A. No. 05-858
)	
Plaintiff,)	
)	
v.)	JURY TRIAL DEMANDED
)	
INDIAN RIVER SCHOOL DISTRICT,)	
EDIS COMPANY, and)	
BECKER MORGAN GROUP, INC.,)	
)	
Defendants.)	

**DECLARATION OF PATRICK C. MILLER
IN SUPPORT OF
DEFENDANT IRSD'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, Patrick C. Miller, make the following declaration:

1. I am the Director of Business for the Indian River School District, and have personal knowledge of the facts set forth in this Declaration, and these facts are true.
2. Indian River School District is a public school district and agency of the State of Delaware.

3. Indian River School District entered into a public works contract dated September 28, 2002 with McDaniel Plumbing and Heating, Inc. ("McDaniel") for the mechanical, plumbing, and ATC work for the new Sussex Central High School. RLI, as surety for McDaniel, issued a performance bond to IRSD as obligee. Copies of the contract, the general conditions and supplementary conditions to the contract, and performance bond are attached as exhibits "A," "B," "C" and "D," respectively.

4. Pursuant to that contract, Indian River School District paid McDaniel (either by check, direct deposit, or joint check with its subcontractors and suppliers) out of monies appropriated from the State of Delaware, the sum of \$4,041,863.

5. Each of these payments was made upon monthly applications for payment submitted by McDaniel. The amounts paid were the amounts certified as due by the architect, Becker Morgan Group, and the construction manager, EDIS Company, on a Certificate for Payment form.¹ Copies of the cover pages of each application for payment, which contained the certificates for payment signed by the architect and construction manager, are attached to this Declaration as exhibit "E."

I declare under penalty of perjury under that the foregoing is true and correct.
Executed on September 24, 2007.

Patrick C. Miller

¹ The total of the Certificates for Payment is \$4,052,263. On application for payment 24, the amount certified for payment by the architect and construction manager was \$106,400. Of this amount, IRSD paid \$96,000; the remaining \$10,400 was held while it was determined to whom to make payment, McDaniel or its surety. Before the determination was made, the default termination occurred.